

Title 129 - Nebraska Air Quality Regulations

Chapter 15 - OPERATING PERMIT MODIFICATIONS; REOPENING FOR CAUSE

001 Administrative permit amendments.

001.01 An "administrative permit amendment" is a permit revision that:

001.01A Corrects typographical errors;

001.01B Identifies a change in the name, address, or telephone number of any person identified in the permit, provided that the owner or operator of the source is not changed;

001.01C Requires more frequent monitoring or reporting by the permittee; and

001.01D Allows for a change in ownership or operational control of a source where the permitting authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the permitting authority.

001.02 A permittee may request the agency to make an administrative permit amendment in writing by specifying the section of the permit that is to be changed and the reason for the change.

001.03 The source may implement the changes addressed in the request immediately upon submittal of the request, subject to the Department's final action on the request under 001.04.

001.04 The Department shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes into the permit without providing notice to the public, EPA, or affected States.

001.05 For Class I permits only, the Department shall submit a copy of the revised permit to the Administrator of EPA.

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001.06 If the Department determines that the permittee's request for an administrative permit amendment should be handled as a minor modification or other permit modification, the Department shall notify the permittee of this determination and proceed with such modification pursuant to the applicable procedures.

001.07 The permit shield described in Chapter 8, 014, shall not apply to an administrative permit amendments.

002 Permit modifications to the acid rain portion of a Class I permit shall be governed by Chapter 26.

003 Minor Permit Modifications.

003.01 The minor permit modification procedures of this section may be used only for those permit modifications that:

003.01A Do not violate any applicable requirement or applicable requirement under the Act;

003.01B Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

003.01C Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

003.01D Do not seek to establish or change a permit term or condition for which there is no corresponding applicable requirement or applicable requirement under the Act to which the source would otherwise be subject. Such terms and conditions include:

003.01D1. A federally enforceable emissions cap assumed to avoid classification as a modification which would require a construction permit under Chapter 17; and

003.01D2. An alternative emissions limit approved pursuant to Chapters 27 or 28;

003.01E Are not modifications which:

003.01E1. Require a construction permit under Chapter 17;

003.01E2. Are defined as a modification under the General Provisions for the standards of performance for new stationary sources incorporated by reference in Chapter 18, 01.01; and

003.01E3. Are defined as a modification subject to preconstruction review under Chapter 19, 001.

003.01E4. Are defined as a modification under the National Emissions Standards for Hazardous Air Pollutants incorporated by reference in Chapter 23, 001.

003.01F Are not required by the Director to be processed as a significant modification; and

003.01G Involve the use of economic incentives, marketable permits, emissions trading, and other similar programs or procedures provided that such minor permit modification procedures are explicitly allowed for in an applicable State implementation plan or in an applicable requirement or applicable requirement under the Act.

003.02 A permittee may request a minor permit modification by filing the standard application form for either a Class I or Class II operating permit, as appropriate, and shall include the following:

03.02A A description of the change, the emissions resulting from the change, and any new applicable requirements or applicable requirements under the Act that will apply if the change occurs;

003.02B The source's suggested draft permit language;

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003.02C Certification by a responsible official, in accordance with Chapter 7, section 008, that the proposed modification meets the criteria in section 003.01 above for use of minor modification procedures and a request that such procedures be used;

003.02D For a Class I minor permit modification only, two extra copies of completed forms identified in 003.02A through 003.02C above for the Department to use to notify the Administrator of EPA and affected States.

003.03 For Class I operating permit modifications only, within five working days of receipt of a complete permit modification application, the Department shall notify the Administrator of EPA and affected States of the requested permit modification.

003.03A Affected States shall have 30 days to review and provide comments on the requested permit modification. The Department shall provide notice to the Administrator of EPA and any affected State in writing of any refusal by the Department to accept all recommendations that the affected State has submitted.

003.03B EPA shall have 45 days to review and comment on the requested permit modification. The Department shall not issue a final permit modification until after EPA's 45 day review period or until EPA has notified the Department that EPA will not object to issuance of the permit modification, whichever is first.

003.04 Within 90 days of the Department's receipt of an application under the minor permit modification procedures or 15 days after the end of EPA's 45 day review period, whichever is later, the Department shall:

003.04A. Issue the permit modification as proposed;

003.04B. Deny the permit modification application;

003.04C. Determine that the requested modification does not meet the minor permit modification criteria in 003.01 above and should be reviewed under the significant modification procedures; or

003.04D Revise the draft permit modification and for Class I modifications only, transmit the new proposed permit to EPA for review as required in 003.03B above.

003.05 A source submitting a minor permit modification request may make the change proposed immediately after it files the application unless notified by the Department that the request does not qualify as a minor permit modification. After the source makes the change, and until the Department takes action under 003.04A through 003.04C above, the source must comply with both the applicable requirements and applicable requirements under the Act governing the change and the proposed permit terms and conditions. If the source fails to comply with its proposed permit terms and conditions during this interim period, the existing permit terms and conditions the source seeks to modify may be enforced and such failure to comply shall be cause for denial of the minor permit modification request.

003.06 The permit shield described in Chapter 8, 014, shall not apply to a minor permit modification.

004 Group processing of minor permit modifications.

004.01 The Director, at his or her discretion, may modify the minor permit modification procedures in 003 above to process groups of a source's applications for certain modifications eligible for minor permit modification procedures.

004.02 Group processing of modifications may only be used for those permit modifications:

004.02A That meet the criteria for minor permit modification procedures under 003 above; and

004.02B That collectively are below the following threshold level: 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested, 20 percent of the applicable definition of major source for purposes of Class I permitting, or five tons per year, whichever is less.

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004.03 A permittee may request the use of group processing procedures in this section by filing the standard application form for a Class I or Class II operating permit, as appropriate, and shall include the following:

004.03A A description of the change, the emissions resulting from the change, and any new applicable requirements or applicable requirements under the Act that will apply if the change occurs;

004.03B The source's suggested draft permit language;

004.03C Certification by a responsible official, in accordance with Chapter 7, section 008, that the proposed modification meets the criteria for use of groups processing procedures and a request that such procedures be used;

004.03D A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under 004.02B above;

004.03E For Class I modifications only, two extra copies of completed forms for the Department to use to notify the Administrator of EPA and affected States.

004.03E1. Within five working days of receipt of an application for the group processing of a source's minor permit modification requests, the Department shall notify the Administrator of EPA and affected States of the request for group processing.

004.03E2. Affected States shall have 30 days to review and comment on the request. The Department shall notify EPA and any affected State in writing of any refusal by the Department to accept all recommendations for the proposed permit modification that the affected State has submitted.

004.03E3. EPA shall have 45 days to review and comment on request for group processing of minor permit modifications. The Department shall not issue a final permit modification until after EPA's 45 day review period or until EPA has notified the permitting authority that EPA will not object to issuance of the permit modification, whichever is first.

004.04 Within 180 days of receipt of the application for group processing of minor permit modifications or 15 days after the end of the EPA's 45 day review period, whichever is later, the Director shall:

004.04A Issue the permit modification as proposed;

004.04B Deny the permit modification application;

004.04C Determine that the requested modification does not meet the criteria for group processing in 004.02 and should be reviewed under the significant modification procedures; or

004.04D Revise the draft permit modification and, for Class I permit modifications only, transmit to the Administrator of EPA the new proposed permit modification as required by 004.03E3 above.

004.05 A source submitting a request for group processing of minor permit modifications may make the change proposed immediately after it files the application unless notified by the Department that the request does not qualify as a minor permit modification. After the source makes the change, and until the Department takes action under 004.04A through 004.04C above, the source must comply with both the applicable requirements and applicable requirements under the Act governing the change and the proposed permit terms and conditions. If the source fails to comply with its proposed permit terms and conditions during this interim period, the existing permit terms and conditions the source seeks to modify may be enforced and such failure to comply shall be cause for denial of the minor permit modification request.

004.06 The permit shield described in Chapter 8, 014, shall not apply to group-processed minor permit modifications.

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005 Significant modifications.

005.01 A "significant modification" is any revision or change to a permit that cannot be accomplished as an administrative permit amendment or as a minor permit modification. Any relaxation in existing monitoring, reporting, or recordkeeping shall be considered significant.

005.02 A permittee may request a significant modification by complying with the application procedures for permit issuance in Chapter 7, section 006.

005.03 The Department shall review an application for a significant modification following the applicable procedures for permit issuance, including public participation, EPA and affected States review.

005.04 The permit shield described in Chapter 8, 014, shall apply to a significant modification only after the Director approves the modification, provided that the permit contains a permit shield.

006 Reopening for cause; revocation and reissuance; and termination.

006.01 Any Class I or Class II operating permit issued by the Director shall be reopened, revoked and reissued or terminated, during its term for cause, including but not limited to:

006.01A Additional applicable requirements under the Act or the State Act become applicable to a Class I or Class II permitted source with a remaining permit term of 3 or more years. Such reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended.

006.01B Additional requirements, including excess emissions requirements, become applicable to an affected source under the acid rain program under Chapter 26.

006.01C The Director, or the Administrator of EPA for a Class I permit only, determines that the permit must be revoked and reissued to assure compliance with the applicable requirements.

006.01D The Director, or the Administrator of EPA for a Class I permit only, determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

006.01E The Director, or the Administrator of EPA, for a Class I permit only, determines that an applicable requirement or applicable requirement under the Act applies which was not identified by the permittee in its application.

006.02 A Class I or Class II operating permit may be revoked during its term for cause, including but not limited to:

006.02A The existence at the facility of unresolved noncompliance with applicable requirements or a term or condition of the permit, and refusal of the permittee to agree to an enforceable schedule of compliance to resolve the noncompliance;

006.02B The permittee has falsely certified or submitted false, incomplete, or misleading information to the Department or EPA;

006.02C The Director determines that the permitted facility or activity endangers human health or the environment and that the danger cannot be removed by a modification of the permit; or

006.02D The permittee has failed to pay a penalty owed pursuant to court order, stipulation and agreement, or order issued by the Administrator of EPA.

006.03 The Department shall initiate a reopening or revocation under 006.01 or 006.02 above by providing a notice of intent to the permittee and publishing notice of such intent following the procedures applicable to permit issuance including public participation, and EPA and affected States review for Class I permits only.

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Proceedings to reopen a permit shall affect only those parts of the permit for which cause to reopen exists. The Department shall provide a minimum 30 day public comment period unless the Director determines that an emergency exists which necessitates a shorter time period.

006.04 If the Department receives a notification from the Administrator of EPA that a Class I operating permit should be reopened for cause pursuant to this section, the Department shall, within 90 days of receipt of such notification, forward to EPA a proposed determination of modification, or revocation and reissuance, as appropriate.

006.05 If the Administrator of EPA does not object to the Department's determination under 006.04 above within 90 days, the Department shall proceed as indicated.

006.06 If the Administrator of EPA objects to the Department's determination under 006.04 above within 90 days, the Department shall have an additional 90 days from receipt of EPA's objection during which the Department may take the action to terminate, modify, or revoke and reissue the permit in accordance with the EPA's objection.

006.07 If the Department fails to take action as stated in any EPA objection under 006.06, the permit may be subject to action by the Administrator of EPA.

007 For Class I permits only, a permittee may make the following changes within a permitted facility without a permit revision, if the change is not a modification which would require a construction permit under Chapters 17, 18, 19, 23, 27, and 28, and the change does not result in the emissions allowable under the permit being exceeded, provided that the permittee provides the Director with written notification, as required below, a minimum of 30 days in advance of the proposed changes, unless the Director determines a shorter time is necessary for emergency reasons. The permittee shall attach a copy of the notice to its copy of the Class I operating permit. The permit shield described in Chapter 8, 014, shall not apply to any change made under this section.

007.01 Section 502(b) (10) changes, as defined in Chapter 1, provided that the written notification required above shall include:

007.01A A brief description of the change within the permitted facility,

007.01B The date on which the change will occur,

007.01C Any change in emissions, and

007.01D Any permit term or condition that is no longer applicable as a result of the change.

007.02 Trading of increases and decreases in emissions in the permitted facility, where the applicable implementation plan provides for such emissions trades without requiring a permit revision, provided that the written notification required above shall include such information as may be required by the provision in the applicable implementation plan authorizing the emissions trade, including at a minimum,:

007.02A When the proposed change will occur,

007.02B A description of each such change,

007.02C Any change in emissions,

007.02D The regulatory provisions and permit requirements with which the source will comply using the emissions trading provisions of the applicable implementation plan, and

007.03E The pollutants emitted subject to the emissions trade.

007.03 Trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that has been established in the permit pursuant to Chapter 8, 019, provided that the written notification required above shall include:

007.03A When the change will occur,

007.03B A description of the changes in emissions that will result, and

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007.03C How these increases and decreases in emissions will comply with the terms and conditions of the permit.

008 No permit revision shall be required, under any State-approved programs providing for economic incentives, marketable permits, emissions trading or other similar programs or processes for change that are provided for in the permit.

Enabling Legislation: Neb. Rev. Stat. §§81-1504(1)(2);
 81-1505(12)

Legal Citation: Title 129, Ch. 15, Nebraska Department of
 Environmental Quality

EPA Rulemakings

CFR: 40 C.F.R. 70, Appendix A, State of Nebraska (a)

FRM: 60 FR 53872 (10/18/95)

PRM: 60 FR 12521 (3/7/95)

State Submission: 11/15/93

State Proposal: 12/2/94

State Final: 5/29/95

APDB File: NE-32

Description: The EPA fully approved the operating permits program submitted by the state of Nebraska for the purpose of complying with Federal requirements for an approvable state program to issue operating permits to all major stationary sources and certain other sources. The EPA also approved, under section 112(l), the state's program for accepting delegation of section 112 standards to enforce air toxics regulations.

[illegible]

CFR: 40 C.F.R. 52.1420 (c) (41)

FRM: 60 FR 372 (01/04/95)

PRM: 60 FR 418 (01/04/95)

State Submission: 2/16/94

State Proposal: 12/17/93

State Final: 6/26/94

APDB File: NE-31

Description: As part of the overall recodification of the Nebraska rules, the EPA approved a new rule which establishes requirements for permit modifications and grounds for reopening for cause with respect to SIP-based operating permits. The EPA also approved the rule pursuant to section 112(1) of the Clean Air Act so that it would be enforceable with respect to hazardous air pollutants.

[illegible]

Difference Between the State and EPA-Approved Regulation

None.